IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.MC.No. 454 of 2007()

AGAINST THE ORDER IN CRMP 144 2007 IN
SC.54/2004 of ASSISTANT SESSIONS COURT, HOSDRUG

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PETITIONER/ACCUSED:

ABDULRAHIMAN, AGED 24 YEARS
S/O. ADAMKUNHI, KADAMBU
DETTYALA, VITTILA TALUK,
KARNATAKA STATE.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, REPRSENTING
S.H.O. BEKAL POLICE STATION.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 454 of 2007

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Dated this the 21st day of February, 2007

O R D E R

The petitioner is the accused in a prosecution under the provisions of the Kerala Abkari Act. The trial has already commenced. PWs. 3 and 4 were examined on 25.11.2006. The petitioner is the first accused in the case. Accused 2 to 4 in the same crime had already faced trial and they were acquitted. The very same PWs. 3 and 4 when they were examined in the earlier case had not supported the prosecution case. The petitioner obviously had become complacent and had not obtained the certified copies of the depositions of PWs. 3 and 4 in that earlier trial. In the trial against the petitioner PWs. 3 and 4 supported the case of the prosecution. Taken aback the petitioner was not prepared to confront them with their earlier statements given in the trial against the co-accused. Later, the petitioner secured the relevant certified copies and made an application under Section 311 Cr.P.C. to recall those witnesses. The learned Magistrate, by the impugned order, rejected the said prayer. The petition under Section 311 Cr.P.C. was dismissed by the learned

Magistrate by the impugned order. The short prayer of the petitioner is that the petitioner may be granted an opportunity to recall and cross examine PWs. 3 and 4.

2. Notice is given to the Prosecutor. I have heard the learned counsel. I am satisfied, in the peculiar facts and circumstances of the case, that notwithstanding the delay on the part of the petitioner in making the requisite application and notwithstanding the fact that the petitioner, though he had an opportunity to cross examine PWs. 3 and 4, had not effectively cross examined those witnesses on that earlier occasion, the interests of justice demand that the petitioner must be given a further opportunity to cross examine PWs. 3 and 4, subject of course to appropriate conditions.

3. This Crl.M.C. is allowed. The impugned order is set aside. The learned Asst. Sessions Judge, Hosdurg shall grant the petitioner a further opportunity to cross examine PWs. 3 and 4, on condition that the petitioner deposits a total amount of Rs.500/- (Rs.250/- each) as cost payable to PWs. 3 and 4 within a period of seven days from this date.

(R. BASANT)
Judge

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